IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Criminal Appeal No.597/2001

Mahavir S/o Shri Shiv Charan
Versus
State of Rajasthan through Public Prosecutor

2. S.B. Criminal Appeal No.642/2001

Banwari S/o Shri Tara Chand
Versus
The State of Rajasthan through P.P.

Date of Judgment :::: 29th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Manoj Bhardwaj, Counsel for accused-appellant Mahavir
Shri Sunil Kumar Yadav, Amicus Curiae in both the appeals
Smt. Nirmala Sharma, P.P., for the State

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By the Court:-

These two appeals, on behalf of accused-appellants Mahavir S/o Shiv Charan and Banwari S/o Tara Chand, are directed against common impugned judgment dated 18th August, 2001, passed by the Special Judge (Dacoity Affected Area) & Additional Sessions Judge, Dholpur, in Sessions Case No.14/1993, whereby appellants were convicted under Section 364/34 and 307/34, IPC, and sentenced in each offence to undergo 10 years rigorous imprisonment and a fine of Rs.5,000/-; in default of payment of fine, each of the

appellant to further undergo 2 years simple imprisonment. Both the sentences were ordered to run concurrently.

The learned counsel for the accused-appellants, Shri Manoj Bhardwaj and Shri Sunil Kumar Yadav, have not pressed the appeal on merits in view of the statement of PW-13 Sandeep and contended that looking to all the facts and circumstances of the case including the material contradictions in the statements of PW-3 Ram Swaroop, PW-6 Satya Prakash and PW-15 Vinod, the sentence of imprisonment awarded by the trial court is excessive and the same may be reduced to a period of imprisonment of five years and nine months already undergone by both the appellants.

The learned Public Prosecutor did not seriously oppose the prayer of learned counsel for both the appellants to reduce the sentence of imprisonment in view of the fact that order of conviction has rightly not been challenged by them but it is contended that sentence of imprisonment should not be less than seven years R.I.

The learned counsel for the appellants have not challenged the order of conviction passed against both the appellants, on merits, and rightly so, in view of the statement of PW-13 Sandeep, therefore, it is not necessary to refer and discuss the facts of the case

in detail.

So far as reduction of sentence of imprisonment of accused-appellants is concerned, I have considered the submissions of learned counsel for the parties.

The statement of PW-6 Satya Prakash was referred by the learned counsel for the appellants, who stated that Sandeep was abducted by the appellants and both the accused-appellants admitted before PW-3 Ram Swaroop and PW-15 Vinod that they abducted the boy Sandeep for committing his murder, but this fact is not corroborated by PW-6 Ram Swaroop and PW-15 Vinod, both in their statements recorded before the trial court, therefore, this fact, as stated by PW-6 Satya Prakash is not corroborated by PW-6 Ram Swaroop (father of Sandeep) and PW-15 Vinod (brother of Sandeep). There are eleven injuries on the person of Sandeep but all are simple in nature by blund object. His injury report is Exhibit P-29, which is proved by PW-14 Dr. Harish Chand Pachori, who also admitted in his cross-examination that these injuries can come if a person is fell down from the stairs. Looking to all the facts and circumstances of the case I think it fit and proper as well as in the interest of justice that ends of justice will meet in case the sentence of 10 years RI awarded by the trial court is reduced to a period of 7 years RI with fine as awarded by the trial

court in each offence.

Consequently, both the appeals are partly allowed. The impugned judgment of conviction passed by the trial court against both the appellants is upheld, as not pressed by the learned counsel for both the appellants, but the order of sentence of imprisonment passed by the trial court is modified to the extent that each of the accused-appellants, instead of 10 years RI as ordered by the trial court, shall undergo 7 years RI under both the offences with fine of Rs.5,000/-; in default of payment of fine, to further undergo two months additional rigorous imprisonment.

A copy of this judgment may be placed in S.B. Criminal Appeal No.642/2001.

(Narendra Kumar Jain) J.

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